

It was undisputed that after loading equipment in a pickup truck claimant injured his left knee when he stepped down from the bed of the truck. Medical treatment included four surgeries and extensive physical therapy. Claimant's medical expert, Dr. Peter Bieri, offered the sole impairment rating of 20 percent to the left lower extremity. The

Administrative Law Judge (ALJ) adopted Dr. Bieri's rating and determined claimant suffered a 20 percent permanent partial disability to his left lower extremity.

Respondent requests review of the nature and extent of claimant's disability and argues that because claimant did not have a history of direct trauma to his knee it was improper, pursuant to the *AMA Guides*¹, for Dr. Bieri to assess a 5 percent impairment for patellofemoral pain. Consequently, respondent further contends claimant's impairment should be reduced by 5 percent.

Claimant argues that he suffered multiple impairments to his right lower extremity and there was no medical evidence to rebut Dr. Bieri's opinion, therefore, the ALJ's Award should be affirmed.

The sole issue for Board determination is the nature and extent of claimant's scheduled disability to the left lower extremity.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

Claimant was injured while working for respondent. On October 29, 2008, he was loading equipment in the bed of a pickup truck and when he stepped down from the truck he noted "my knee just blew out."²

Respondent referred claimant for medical treatment with Dr. Michael Yost at Newman Orthopedic and Sports Medicine. Dr. Yost ordered physical therapy for claimant both before and after the three surgeries he performed on claimant's left knee. On January 16, 2009, the first surgery consisted of an ACL reconstruction and partial medial meniscectomy. The second surgery on October 30, 2009, consisted of an arthroscopic synovectomy. The third surgery on January 19, 2010, consisted of chondrocyte implantation. The claimant continued to experience pain, weakness and limited range of motion in his knee. Claimant was then referred to Dr. Lowry Jones who performed a fourth surgery on claimant's left knee on February 4, 2011, which consisted of an arthroscopic partial meniscectomy.³ The claimant noted the surgery performed by Dr. Jones was more

¹ American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *AMA Guides* unless otherwise noted.

² R.H. Trans. at 5.

³ Crotts Depo., Ex. 1.

successful. Claimant stated the surgery was to clean out excess scar tissue as well as a cartilage fragment that kept him from straightening his knee out.⁴

Over the course of his treatment both before and after surgeries claimant attended 85 physical therapy appointments at Emporia Physical Therapy. Dr. Jones also prescribed post-surgery physical therapy for claimant with Mathis. Claimant was released without restrictions on April 25, 2011. After being released by Dr. Jones, claimant testified that he still has occasional left knee pain for which he takes Ibuprofen.

Dr. Peter Bieri examined and evaluated claimant on June 6, 2011, at the request of claimant's attorney. The doctor reviewed claimant's medical records and also took a history from him. Upon physical examination, Dr. Bieri found claimant had moderate patellofemoral pain and crepitation with active and passive range of motion as well as slight instability to manual testing against resistance. The doctor opined that claimant's diagnosis was consistent with his ACL and medial meniscus tear due to his work-related injury. Dr. Bieri imposed permanent restrictions to avoid squatting, kneeling and crouching.

Based on the *AMA Guides*, Dr. Bieri rated claimant with a 20 percent permanent partial impairment to claimant's left lower extremity attributable to his work-related injury. The 20 percent was comprised of: (1) 5 percent for patellofemoral pain; (2) 8 percent for weakness and atrophy; (3) 7 percent for ACL laxity; and (4) 2 percent for residuals of partial medial meniscectomy.

Dr. Bieri agreed that he used table 62 on page 83 of the *AMA Guides* to provide his 5 percent rating for patellofemoral pain. The following colloquy occurred regarding that rating:

Q. Now actually Table 62 is talking about cartilage intervals, correct?

A. That's arthritis table. That's correct.

Q. Right. But underneath that table there is an allowance for 5 percent impairment, and I'll just read -- tell -- if I read this correctly. In a patient with a history of direct trauma a complaint of patellofemoral pain and crepitation on physical examination, but without joint space narrowing on Roentgenograms a 2 percent whole person or a 5 percent lower extremity impairment is given. Did I read that correct?

A. That is correct.

Q. And is that where you came up with the 5 percent?

A. Yes.

⁴ R.H. Trans. at 10-11.

Q. All right. And you did that even though Mr. Gutierrez does not have a history of direct trauma to the knee?

A. His mechanism of injury I think is consistent with direct trauma.

Q. He stepped off of a -- of a truck or train or something, wasn't it, according to [sic] your history?

A. He stepped off a truck. That's correct.

Q. All right. And received no blow to the knee at that time, did he?

A. That's correct.⁵

Simply stated, the only doctor to testify in this matter concluded that claimant's injury was consistent with a direct trauma as required by the section of the *AMA Guides* that he used to rate claimant. Dr. Bieri further opined that surgery is also a direct trauma.

K.S.A. 44-510d(a)(23) provides that loss of a scheduled member shall be based upon permanent impairment of function to the scheduled member as determined using the *AMA Guides*, if the impairment is contained therein.

The determination of the existence, extent and duration of the injured worker's incapacity is left to the trier of fact.⁶ It is the function of the trier of fact to decide which testimony is more accurate and/or credible and to adjust the medical testimony with the testimony of the claimant and others in making a determination on the issue of disability. The trier of fact must make the ultimate decision as to the nature and extent of injury and is not bound by the medical evidence presented.⁷

Board decisions are based upon the evidence presented and record made in front of the ALJ. The Board declines to take up the role of a medical expert, interpret claimant's medical history and clinical findings, and apply its medical expertise and interpretation of the *AMA Guides* to assess claimant's functional impairment rating. The respondent's arguments go to the weight to be accorded the testimony of Dr. Bieri but there is no other medical testimony in this case that challenges the doctor's method of rating the claimant pursuant to the *AMA Guides*. The statute mandates that loss of a scheduled member shall be based upon permanent impairment of function to the scheduled member as determined using the *AMA Guides*, if the impairment is contained therein. And after considering and weighing the expert medical opinion presented in this claim by Dr. Bieri, the Board affirms

⁵ Bieri Depo. at 14-15.

⁶ *Boyd v. Yellow Freight Systems, Inc.*, 214 Kan. 797, 522 P.2d 395 (1974).

⁷ *Graff v. Trans World Airlines*, 267 Kan. 854, 983 P.2d 258 (1999).

the ALJ's finding that claimant has sustained a 20 percent functional impairment to the left lower extremity. The Board is not persuaded that Dr. Bieri's opinions regarding claimant's functional impairment were refuted by respondent's cross-examination of the doctor or by respondent's interpretation of claimant's medical findings and the *AMA Guides*. Once again, the only doctor to testify in this matter concluded that claimant's injury and surgeries were sufficient to qualify as a direct trauma as required by the section of the *AMA Guides* that he used to rate claimant's patellofemoral pain.

As required by the Workers Compensation Act, all five members of the Board have considered the evidence and issues presented in this appeal.⁸ Accordingly, the findings and conclusions set forth above reflect the majority's decision and the signatures below attest that this decision is that of the majority.

AWARD

WHEREFORE, it is the decision of the Board that the Award of Administrative Law Judge Brad E. Avery dated January 30, 2012, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of May, 2012.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

e: Michael C. Helbert, Attorney for Claimant, krussell@helbert-allemang.com
Bryce D. Benedict, Attorney for Respondent, bbenedict@kdheks.gov
Brad E. Avery, Administrative Law Judge

⁸ K.S.A. 2011 Supp. 44-555c(k).